

SENATE BILL REPORT

SB 6524

As of February 6, 2008

Title: An act relating to authorizing tribal police officers to act as general authority Washington state peace officers.

Brief Description: Authorizing tribal police officers to act as general authority Washington state peace officers.

Sponsors: Senators Kline, Sheldon, Hobbs, Kauffman, Rasmussen and McAuliffe.

Brief History:

Committee Activity: Judiciary: 2/01/08.

SENATE COMMITTEE ON JUDICIARY

Staff: Robert Kay (786-7405)

Background: General Authority State Peace Officers. A general authority Washington State Peace Officer is any officer of a general authority law enforcement agency in the state, including those of local governments, the Washington State Patrol, and the Department of Fish and Wildlife. General authority peace officers may enforce criminal or traffic laws of the state throughout the territorial boundaries in the following circumstances:

- under the auspices of an inter-local agreement;
- in response to an emergency involving immediate threat to human life or property;
- in response to a request for assistance pursuant to a law enforcement assistance agreement;
- when transporting prisoners;
- when executing an arrest warrant or search warrant; or
- when in fresh pursuit.

Tribal Police Officer Certification. In 2006 the Legislature passed law allowing tribal police officers to voluntarily obtain Washington police officer certification through the state's Criminal Justice Training Commission (CJTC). Officers making this certification must meet the statutory requirements for all certified state police officers, including submitting to psychological tests and criminal background checks. Applications by tribal law enforcement agencies for police officer certification are processed in the same manner as any state application. To participate in this program, tribal governments must enter into a written agreement with the CJTC. The written agreement must require the tribal law enforcement agency and its officers to comply with all of the requirements for granting, denying, and revoking certification as they are applied to state general authority peace officers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

"Indian Country" and Public Law 280. Public Law 280 (PL-280) is a 1953 federal law whereby states were authorized to assume criminal and civil jurisdiction, concurrent with the federal government, over "Indian country." "Indian country" is a term of art defined by federal statute, and includes: 1) all tribal lands within the boundaries of an Indian reservation, including land allotted to individual Indians but held in trust by the federal government; and 2) all dependent Indian communities within the borders of the United States, whether or not on reservation land. Concurrent criminal jurisdiction under PL-280 includes jurisdiction over offenses committed by or against Indians in Indian country. PL-280 expressly authorized several states to assume concurrent jurisdiction and the remaining states, including Washington, were granted the discretion to legislate such assumption of jurisdiction. State criminal jurisdiction in Indian country over crimes committed by non-Indians against non-Indians pre-existed the passage of PL-280 in federal law. Thus, after PL-280, states were authorized to assume criminal jurisdiction in Indian country regardless of the identity of the suspect or victim.

In 1957 and 1963 Washington implemented its discretionary authority under PL-280 and assumed criminal and civil jurisdiction by statute over Indian country in this state, except over Indians on tribal or allotted lands within an established reservation. Washington State elected not to extend its full PL-280 authorized jurisdiction over Indians on these lands, except in eight subject matter areas, unless it received a resolution from a tribe expressing its desire that the state assume criminal or civil jurisdiction over Indians on its reservation. Washington assumed complete jurisdiction in all Indian country regardless of tribal consent in the eight areas of: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoption proceedings; dependent children; and the operation of motor vehicles on public streets, roads, alleys, and highways.

Washington State, in declining to assume jurisdiction under PL-280 on reservation lands without the tribe's consent, anticipated a 1968 federal statute which ended the power of states under PL-280 unilaterally to assume jurisdiction over Indians on reservation lands without the consent of the tribe. The 1968 statute was not retroactive, however, so the statute did not have the effect of restoring to the tribes any jurisdiction assumed by states under PL-280-authorized state statutes prior to 1968. On Indian reservation land of tribes declining to cede jurisdiction under Washington's PL-280 authorized statute, criminal and civil jurisdiction remained mainly either federal or tribal.

In Washington, the Muckleshoot, Squaxin, Nisqually, and Skokomish tribes have requested full state civil and criminal PL-280 authority on their tribal and allotted lands within their respective reservations. Reservations created after 1968 that required tribal consent to participate in a PL-280 cession of jurisdiction and that have given consent include: the Jamestown S'Klallam; Nooksack; Upper Skagit; Stillaguamish; Sauk-Suiattle; Samish; Cowlitz; Snoqualmie; and Cook's Landing. The Samish and Cowlitz currently do not have reservations.

The remaining tribes are partial PL-280 tribes: Chehalis; Colville; Yakama; Hoh; Kalispell; Lower Elwha; Lummi; Makah; Port Gamble S'Klallam; Puyallup; Quileute; Quinault; Shoalwater Bay; Spokane; Suquamish; Swinomish; Tulalip; and Upper Skagit. Partial PL-280 tribes have their own tribal governments including comprehensive court systems and codes and law enforcement agencies.

Criminal Jurisdiction in Indian Country in Washington State. PL-280 Tribes. In Washington, the state has concurrent criminal jurisdiction in Indian country regardless of the identity of the suspect or victim.

Criminal Jurisdiction in Washington Over Crimes in PL-280 Indian Country

Identity of Suspect	Identity of Victim	Type of Offense	Criminal Jurisdiction
Indian	Indian	Major Crimes	State or Federal
Indian	Indian	Non-Major Crimes	State or Federal
Indian	Non-Indian	Any Offense	State or Federal
Indian	Victimless	Any Offense	State, Tribal, or Fed.
Non-Indian	Indian	Any Offense	State or Federal
Non-Indian	Non-Indian	Any Offense	State
Non-Indian	Victimless	Any Offense	State

Non-PL-280 Tribes. If a tribe has not requested or consented to the assumption of state criminal jurisdiction under PL 280, the title status of the property where the offense was committed and the identity of the suspect and victim, Indian or non-Indian, determines state authority to prosecute. If the non-PL-280 property is tribal or allotted land within the reservation, jurisdiction is either federal or tribal, or both, and Washington courts do not have jurisdiction except where both the suspect and victim are non-Indian or where the suspect is non-Indian and the crime is victimless. The federal government has jurisdiction concurrent with the tribal government on these non-PL 280 reservation lands where the suspect is Indian and has committed a "major crime" as defined by federal statute, regardless of the identity of the victim. The federal government has exclusive jurisdiction on non-PL 280 reservation lands where the suspect is non-Indian and the victim is Indian, regardless of the nature of the crime. The tribal government has exclusive criminal jurisdiction on non-PL 280 reservation lands only when the suspect is Indian and is accused of a non-major or victimless crime. The state has criminal jurisdiction over land within the reservation only when the land is held in fee and not in trust by the federal government, regardless of the crime or the identity of the suspect or victim.

Criminal Jurisdiction in Washington Over Crimes in non-PL-280 Indian Country

Identity of Suspect	Identity of Victim	Type of Offense	Criminal Jurisdiction
Indian	Indian	Major Crimes	Federal
Indian	Indian	Non-Major Crimes	Tribal
Indian	Non-Indian	Major Crimes	Federal
Indian	Non-Indian	Non-Major Crimes	Tribal or Federal

Indian	Victimless	Any Offense	Tribal
Non-Indian	Indian	Any Offense	Federal
Non-Indian	Non-Ind/ Victimless	Any Offense	State

Search and Arrest Warrant Service. In PL-280 and non-PL-280 Indian country state criminal jurisdiction extends to the service of an otherwise valid state court search or arrest warrant on tribal lands where related to off-reservation violations of state laws, regardless of the identity of the owner of the property to be searched or seized. In PL-280 Indian country state criminal jurisdiction extends to the service of an otherwise valid state court search or arrest warrant on tribal lands where related to on-reservation violations of state laws, regardless of the identity of the owner of the property to be searched or seized.

While tribal court judges may issue search warrants under tribal law, such warrants are probably not enforceable outside the territorial boundaries of the reservation because a tribal judge is not a "magistrate" as defined in Washington law, and thus does not have state law authority to issue a warrant enforceable outside the reservation.

Summary of Bill: Tribal police officers are authorized to act as general authority Washington State Peace Officers when the appropriate tribal government meets specified requirements regarding certification, insurance liability, and administration. The appropriate tribal government must submit proof of the required certification and other information to the Office of Financial

Management (OFM) for review and verification. Only when this information has been provided to OFM are the tribal police officers authorized to act as general authority Washington State Peace Officers.

The authority is granted only within the boundaries of the reservation except in the following circumstances granted by statute to any general authority Washington peace officer: with prior written consent of the local sheriff or chief of police; in response to an emergency involving threat to human life or property; in response to a request for assistance pursuant to a mutual law enforcement assistance agreement; in response to the request of another peace officer with enforcement authority; when transporting a prisoner; when executing an arrest or search warrants; or, when in fresh pursuit.

Certification. For a tribal police officer to be authorized as a general authority Washington State Peace Officer, the tribal police officer must be certified pursuant to statute. The appropriate tribal law enforcement agency must have a written agreement with the CJTC and have submitted its police officers seeking certification to the same requirements as the state's certified peace officers.

Insurance Liability. Tribal governments must carry liability insurance and waive sovereign immunity to the extent of such coverage so as to allow a civil action for damages in the event a tribal police officer acting in the capacity of a state peace officer commits a tort. The OFM will have discretion to determine the adequacy of coverage based on its own risk management analysis.

Inter-Local Requirements. Authorized tribal police officers acting in the capacity of a state peace officer must submit copies of any citation, notice of infraction, or any incident report to

the appropriate local police chief or sheriff within three days. Any citations must be to Washington courts, except that any Indian cited within the boundaries of the reservation may be cited to tribal court. Any citation that does not follow these requirements is unenforceable.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill has been the product of many years of discussions between county sheriff's departments, municipal police departments, and tribal police departments. The bill will not have the effect of infringing on the responsibility of the county sheriff's department. The county sheriff will still be responsible for exercising the state's jurisdiction over non-Indians on fee-simple land within the boundaries of an Indian reservation, and outside the reservation. The bill will especially assist rural areas in that more tribal officers within the reservation will be authorized to act with full general authority police powers. This will enable more mutual aid agreements between county sheriff's departments and/or municipal police departments and tribal police departments. These agreements will grow in number and importance, because tribal police, after certification, will be seen as equals by non-Indian law enforcement personnel. More mutual aid agreements means more effective law enforcement within Indian reservations over fee-simple land where non-Indian suspects have been engaging in criminal activity away from the effective reach of the non-Indian law enforcement in the area. More mutual aid agreements means more cooperation in rural counties where the expense of law enforcement is difficult to bear. More agreements can also enable more effective joint crime analysis, intelligence and tactical operations between county sheriff deputies, municipal police officers, and tribal officers in urban areas adjoining tribal land. In a natural emergency, more mutual aid agreements mean more effective response to the emergency, especially in rural areas.

The Legislature should do whatever it can do to foster cooperation between non-Indian and Indian police agencies. Many non-Indian police chiefs and sheriffs are in favor of this bill. They like the idea of more tribal officers being able to respond when a sheriff deputy or a police officer is in trouble just off the reservation. Six tribes have already developed training programs that meet the standards set by the Criminal Justice Training Commission. Tribal officers will not automatically be certified as general authority Washington police officers under this bill, but will have to go through the same training as non-Indian law enforcement officers. Federal law governs prosecution of criminal acts by tribal officers against non-Indian victims on the reservation. Non-Indians who have a tort claim for civil damages against a tribal police officer can use the Federal Tort Claims Act to obtain relief. Many tribes in Washington carry liability insurance with coverage limits significantly higher than many counties and municipalities. The tribes are willing to waive sovereign immunity as a defense to tort claims against tribal police officers. The argument has been made that this bill leaves in place a lack of reciprocity between tribal governments and tribal police on the one hand, and county and municipal governments and county and city police on the other hand.

This is a specious argument because reciprocity already exists; non-Indian police have jurisdiction over the non-Indians living on fee-simple land within, and on all land without, the boundaries of a reservation, while Indian police have jurisdiction over Indians on the reservations.

CON: There appears to be a lack of reciprocity between the Indian tribes and the neighboring counties and cities when, inside a reservation, on fee-land, a non-Indian police officer is allowed to respond to suspected illegal activity occurring on fee-simple land inhabited by non-Indians, but cannot respond to the same, or related suspected illegal activity, occurring at the same time on the land adjoining the fee-simple land, where that adjoining land is inhabited by Indians, because it is tribal land, and under the exclusive jurisdiction of the tribe. This kind of criminal activity does not respect the boundaries between the two types of land. This bill should not pass into law until the tribes agree to allow non-Indian police to have the right of first refusal regarding jurisdiction over Indians within the reservation when the non-Indian police respond to problems on the reservation.

A serious flaw in the bill is its lack of a requirement that all police officers within a tribal police department be certified according to the requirements of the Criminal Justice Training Commission, as are all officers within non-Indian police departments. In order for anyone to have confidence in the professionalism of a tribal police officer, all the law enforcement officers within the tribal police department must be certified. In that sense, the whole tribal police department must be certified, as non-Indian police departments are. Also, allowing non-certified tribal officers to patrol among certified officers invite tort claims for damages.

Another problem with the bill is at present, there is no process established in the bill whereby tribal police officers are accountable for their tortious or unprofessional acts. There is no established procedure whereby non-Indian persons claiming that tribal police have committed criminal or tortious acts can seek redress.

Persons Testifying: PRO: Representative John McCoy, 38th Legislative District, Washington House of Representatives; Tim Sheldon, Commissioner, Mason County Council; Scott Smith, Washington Association of Sheriffs and Police Chiefs, Chief of Police, Tulalip Police Department; Mike Taylor, attorney-at-law, Tulalip Tribe; Rick Smith, Chief of Police, Marysville Police Department; Bill Mahoney, Sheriff, Cowlitz County; Red Wolf Pope, United Indians of All Tribes.

CON: Ken Irwin, Washington State Sheriff's Association and Sheriff, Yakima County.